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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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7 UNITED STATES OF AMERICA,
8 Plaintiff,
9 v.
10 MATHEW KEITH DUNLAP, et al.,
11 Defendants.
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Case No. 2:16-cr-00265-GMN-CWH

ORDER

13 Presently before the court is defendant Mathew Keith Dunlap's motion to change venue
14 for Counts Six, Seven, Eight, Nine and Ten of the superseding indictment pursuant to FRCP 18
15 (ECF No. 945), filed on August 13, 2018. The government filed a response (ECF No. 1178) on
16 September 27, 2018. Dunlap did not file a reply.

17 Defendants Neddenriep and Davisson move to join the motion. (ECF Nos. 1030, 1111).

18 **I. BACKGROUND**

19 On June 14, 2017, defendants Dunlap and Neddenriep, along with fifteen other Vagos
20 members, were charged in count one with RICO conspiracy (18 U.S.C. § 1962(d)), which alleges
21 the defendants agreed and conspired with other Vagos members to conduct and participate,
22 directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of
23 racketeering activity, including acts involving murder, kidnapping, robbery, extortion, and
24 narcotics trafficking. (*See* Superseding Indictment (ECF No. 13) at ¶ 7.) In Counts Six through
25 Ten, defendants Dunlap, Neddenriep, and Davisson are charged with violations of the Violent
26 Crimes in Aid of Racketeering statute (VICAR, 18 U.S.C. § 1959(a)) for crimes covered within
27 the RICO racketeering activity. Those counts relate specifically to a VICAR kidnapping and
28 assault of M.H, with a corresponding firearm charge, and carjacking under 18 U.S.C. § 2119(2).

1 Dunlap now moves to change venue for trial from Las Vegas to Reno, Nevada, as to
2 Counts Six through Ten. He contends that all of the charged activities occurred in Carson City on
3 September 15, 2011, and all of the alleged co-defendants and witnesses live in northern Nevada.
4 The government responds that transferring some, but not all of the charges serves neither judicial
5 economy nor convenience as it would result in two trials.

6 **II. ANALYSIS**

7 Federal Rule of Criminal Procedure 18 provides that “[u]nless a statute or these rules
8 permit otherwise, the government must prosecute an offense in a district where the offense was
9 committed. The court must set the place of trial within the district with due regard for the
10 convenience of the defendant, any victim, and the witnesses, and the prompt administration of
11 justice.” Rule 18 “vests discretion in the court to fix the place of trial at any place within the
12 district with due regard to the convenience of the defendant and his witnesses.” *United States v.*
13 *Benzer*, 2:13-CR-00018-JCM, 2014 WL 7359078, at *6 (D. Nev. Dec. 24, 2014) (quoting
14 Advisory Committee Notes, 1966 Amendments).

15 Here, Dunlap’s motion to change venue for counts six through ten creates the requirement
16 for two trials because he is also charged with count one. Moreover, as the government correctly
17 argues, the RICO conspiracy in count one incorporates the substantive charges in counts six
18 through ten as overt acts in furtherance of the RICO conspiracy. The trial on count one will
19 therefore include proof of the allegations contained in counts six through ten, so no judicial
20 economy will be served with two trials. If Dunlap’s motion is granted, evidence would need to be
21 presented twice at different locations regarding the same charges. No convenience to any party
22 results from such a proposal. Accordingly, the motion is denied.

23 Defendants Neddenriep and Davisson move to join the motion to change venue. Because
24 they are also charged with counts Six through Ten, their motions to join are granted.

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